

FOR CONSIDERATION By the Committee on Commerce and Tourism

577-02664A-12

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1 A bill to be entitled
2 An act relating to notaries public; amending s.
3 117.01, F.S.; revising the application process and
4 requirements for appointment as a notary public;
5 requiring that the Department of State adopt rules for
6 the registration and approval of entities that offer
7 courses on the duties of a notary public; directing
8 that a portion of the surcharge on fees be used for
9 certain purposes and deposited into the Operating
10 Trust Fund of the Department of State; requiring the
11 department to include a certain statement on the
12 application; requiring the department to investigate
13 complaints against a notary public and submit findings
14 to the Executive Office of the Governor; requiring
15 entities issuing bonds for notaries public to submit
16 an annual report to the department; amending s.
17 117.021, F.S.; clarifying that the Governor is
18 authorized to suspend a notary's commission; amending
19 s. 117.05, F.S.; deleting obsolete provisions;
20 conforming provisions to changes made by the act;
21 amending s. 117.103, F.S., relating to certification
22 of a notary's authority; conforming provisions to
23 changes made by the act; amending s. 117.107, F.S.;
24 revising provisions relating to the use of signature
25 stamps; providing that a notary who notarizes the
26 signature of a person who is not in the presence of
27 the notary is subject to suspension; amending s.
28 668.50, F.S.; deleting a provision that has been
29 transferred to s. 117.01, F.S.; transferring certain

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30 responsibilities relating to the administration of
31 notaries public from the Executive Office of the
32 Governor to the Secretary of State; providing for an
33 appropriation; providing an effective date.

34
35 Be It Enacted by the Legislature of the State of Florida:

36
37 Section 1. Section 117.01, Florida Statutes, is amended to
38 read:

39 117.01 Appointment, application, suspension, revocation,
40 application fee, bond, and oath.—

41 (1) The Governor may appoint as many notaries public as he
42 or she deems necessary, each of whom must ~~shall~~ be at least 18
43 years of age and a legal resident of the state. A permanent
44 resident alien may apply and be appointed and shall file with
45 his or her application a recorded Declaration of Domicile. The
46 residence required for appointment must be maintained throughout
47 the term of appointment.

48 (2) A first-time applicant for appointment as a notary
49 public must submit proof that, within 1 year before application,
50 he or she completed interactive or classroom instruction as
51 approved by the Department of State. A public or private sector
52 person or entity registered with and approved by the department
53 may offer courses that satisfy the instruction requirement. The
54 department shall adopt rules for registration and approval of
55 public or private sector persons or entities that offer
56 instruction courses and approve a core curriculum for
57 instruction covering the duties of the notary public which must
58 include the requirements for electronic notarization.

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59 (3) A notary ~~Notaries~~ public shall be appointed for a term
60 of 4 years and shall use and exercise the office of notary
61 public within the boundaries of this state. An applicant must be
62 able to read, write, and understand the English language.

63 (4) ~~(2)~~ The application for appointment must ~~shall~~ be signed
64 and sworn to or affirmed by the applicant, submitted to the
65 Department of State, and ~~shall be~~ accompanied by a fee of \$25,
66 together with the \$10 commission fee required by s. 113.01, and
67 a surcharge of \$4. Of the surcharge, \$1.65 shall be deposited
68 into the Grants and Donations Trust Fund of, ~~which \$4 is~~
69 ~~appropriated to~~ the Executive Office of the Governor, to be used
70 to fund the issuance of notary commissions and the processing of
71 suspensions, and the remaining \$2.35 shall be deposited into the
72 Operating Trust Fund of the Department of State, to be used to
73 fund the processing of notary applications, the provision of
74 education ~~educate~~ and assistance to ~~assist~~ notaries public, and
75 the investigation of complaints against notaries public.

76 (a) A ~~The Executive Office of the Governor may contract~~
77 ~~with private vendors to provide the services set forth in this~~
78 ~~section. However, no~~ commission fee is not ~~shall be~~ required for
79 the issuance of a commission as a notary public to a veteran, as
80 defined in s. 1.01, who served during a period of wartime
81 ~~service, as defined in s. 1.01(14),~~ and who has been rated by
82 the United States Government or the United States Department of
83 Veterans Affairs or its predecessor to have a disability rating
84 of 50 percent or more; such ~~a~~ disability is subject to
85 verification by the Department Secretary of State, which may ~~who~~
86 ~~has authority to~~ adopt reasonable procedures to administer
87 ~~implement~~ this paragraph act.

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88 (b) An application must be accompanied by the oath of
89 office and the notary bond required by this section. An shall
90 ~~also accompany the application must and shall~~ be submitted in
91 the format a form prescribed by the Department of State and, at
92 a minimum, must include ~~which shall require, but not be limited~~
93 ~~to, the following information:~~

94 1. The applicant's legal full name.

95 2. The applicant's residence address and telephone number.

96 3. The applicant's business address and telephone number.

97 4. The applicant's date of birth, race, sex, and
98 citizenship status.

99 5. The applicant's social security number. ~~citizenship~~
100 ~~status,~~

101 6. The applicant's driver ~~driver's~~ license number or the
102 number of another ~~other~~ official state-issued identification.
103 ~~affidavit of good character from someone unrelated to the~~
104 ~~applicant who has known the applicant for 1 year or more,~~

105 7. A list of all professional licenses and commissions
106 issued by the state to the applicant during the previous 10
107 years and a statement as to whether ~~or not~~ the applicant has had
108 such license or commission revoked or suspended. ~~and~~

109 8. A statement as to whether the applicant has previously
110 been commissioned as a notary public in this state.

111 9. A statement as to whether ~~or not~~ the applicant has been
112 convicted or found guilty of a felony, ~~and, if convicted or~~
113 found guilty ~~there has been a conviction,~~ a statement of the
114 nature of the felony and restoration of civil rights. ~~The~~
115 ~~applicant may not use a fictitious or assumed name other than a~~
116 ~~nickname on an application for commission.~~

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117 (c) The application shall be maintained by the Department
118 of State for the full term of a notary commission. A notary
119 public shall notify, ~~in writing,~~ the Department of State, in
120 writing, of any change in his or her business address ~~or, home~~
121 telephone number, residence address or business telephone
122 number, ~~home address,~~ or criminal history record within 60 days
123 after such change.

124 (d) The Department of State or the Governor may require any
125 other information ~~he or she deems~~ necessary for determining
126 whether an applicant is eligible for a notary public commission.

127 (e) Each applicant must swear or affirm on the application
128 that the information on the application is true and correct. An
129 applicant who submits an application that he or she knows to
130 contain any false, fictitious, or fraudulent statement violates
131 s. 817.155. The Department of State shall conspicuously place
132 the following statement on all notary public application forms:
133 "Please note that an applicant who submits an application that
134 he or she knows to contain any false, fictitious, or fraudulent
135 statement commits a felony of the third degree pursuant to s.
136 817.155, Florida Statutes."

137 (5) ~~(3)~~ As part of the oath, the applicant must swear or
138 affirm that he or she has read this chapter and knows the
139 duties, responsibilities, limitations, and powers of a notary
140 public.

141 (6) Any person may file a complaint with the Department of
142 State alleging a violation of this chapter by a notary public.
143 Upon receipt of a complaint, the department shall conduct a
144 preliminary investigation of the complaint and submit a summary
145 of its investigative findings to the Executive Office of the

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146 Governor.

147 (7)-(4) The Governor may suspend a notary public for any of
148 the grounds provided in s. 7, Art. IV of the State Constitution.
149 Grounds constituting malfeasance, misfeasance, or neglect of
150 duty include, but are not limited to, ~~the following:~~

151 (a) A material false statement on the application.

152 (b) A complaint found to have merit by the Governor.

153 (c) Failure to cooperate with or respond to an
154 investigation by the Executive Office of the Governor ~~Governor's~~
155 ~~office~~ or the Department of State regarding a complaint.

156 (d) Official misconduct as defined in s. 838.022.

157 (e) False or misleading advertising relating to notary
158 public services.

159 (f) Unauthorized practice of law.

160 (g) Failure to report a change in business or residence
161 ~~home~~ address or telephone number, or failure to submit
162 documentation to request an amended commission after a lawful
163 name change, within the specified period of time.

164 (h) Commission of fraud, misrepresentation, or any
165 intentional violation of this chapter.

166 (i) Charging fees in excess of fees authorized by this
167 chapter.

168 (j) Failure to maintain the bond required by this section.

169 (8)-(5)-(a) If a notary public receives notice from the
170 Department of State that he or she ~~his or her office~~ has been
171 suspended from office ~~declared vacant~~, the notary public shall
172 immediately ~~forthwith~~ mail or deliver ~~to the Secretary of State~~
173 his or her notary commission to the Department of State.

174 (9)-(b) A notary public who wishes to resign his or her

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175 commission, or a notary public who does not maintain legal
176 residence in this state during the entire term of appointment,
177 or a notary public whose resignation is required by the
178 Governor, shall send a signed letter of resignation to the
179 Governor and ~~shall~~ return his or her certificate of notary
180 public commission. The resigning notary public shall destroy his
181 or her official notary public seal of office, unless the
182 Governor requests its return.

183 ~~(10)-(6)~~ A ~~No~~ person may not ~~be~~ automatically be reappointed
184 as a notary public. The application process must be completed
185 ~~regardless of~~ whether an applicant is requesting his or her
186 initial ~~first~~ notary commission, a renewal of a commission, or
187 ~~any~~ subsequent commission.

188 ~~(11)-(7)-(a)~~ A notary public shall, before ~~prior to~~ executing
189 the duties of the office and throughout the term of office, give
190 bond, payable to any individual harmed as a result of a breach
191 of duty by the notary public acting in his or her official
192 capacity, in the amount of \$7,500, conditioned on ~~for~~ the due
193 discharge of the office and shall take an oath that he or she
194 will honestly, diligently, and faithfully discharge the duties
195 of the notary public.

196 (a) The bond must ~~shall~~ be approved and filed with the
197 Department of State and executed by a surety company for hire
198 duly authorized to transact business in this state.

199 ~~(b)~~ ~~Any notary public whose term of appointment extends~~
200 ~~beyond January 1, 1999, is required to increase the amount of~~
201 ~~his or her bond to \$7,500 only upon reappointment on or after~~
202 ~~January 1, 1999.~~

203 (b)-(c) ~~Beginning July 1, 1996,~~ Surety companies for hire

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204 which process notary public applications, oaths, or affidavits
205 ~~of character, and~~ bonds for submission to the Department of
206 State must properly submit these documents in a software and
207 hard copy format approved by the department ~~of State.~~

208 ~~(c)(8) An~~ Upon payment to any individual harmed as a result
209 ~~of a breach of duty by the notary public, the entity issuing~~
210 bonds for one or more notaries public must submit an annual
211 report to the Department of State by January 1 which states
212 whether any claims were paid and, if claims were paid, a summary
213 of who has issued the bond for the notary public shall notify
214 the Governor of the payment and the circumstances that which led
215 to the claim. If an entity issuing such bonds does not submit
216 its annual report to the department by January 1, the department
217 shall refuse to accept bonding certificates from the entity
218 until the entity submits the report.

219 (12) The Department of State may contract with private
220 vendors to provide the services set forth in this section.

221 Section 2. Subsection (4) of section 117.021, Florida
222 Statutes, is amended to read:

223 117.021 Electronic notarization.—

224 (4) Failure of a notary public to comply with any of the
225 requirements of this section may constitute grounds for
226 suspension of the notary public's commission by the ~~Executive~~
227 ~~Office of the Governor.~~

228 Section 3. Subsections (1), (3), and (9) of section 117.05,
229 Florida Statutes, are amended to read:

230 117.05 Use of notary commission; unlawful use; notary fee;
231 seal; duties; employer liability; name change; advertising;
232 photocopies; penalties.—

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233 (1) ~~A No~~ person may not ~~shall~~ obtain or use a notary public
234 commission in other than his or her legal name or, ~~and it is~~
235 ~~unlawful for a notary public to~~ notarize his or her own
236 signature. Any person applying for a notary public commission
237 must submit proof of identity to the Department of State if ~~se~~
238 requested. Any person who violates ~~the provisions of this~~
239 subsection commits ~~is guilty of~~ a felony of the third degree,
240 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

241 (3) ~~(a)~~ A notary public seal must ~~shall~~ be affixed to all
242 notarized paper documents, ~~and shall~~ be of the rubber stamp
243 type, ~~and shall~~ include the words "Notary Public-State of
244 Florida." The seal must ~~shall~~ also include the name of the
245 notary public, the date of expiration of the commission of the
246 notary public, and the commission number. The rubber stamp seal
247 must be affixed to the notarized paper document in
248 photographically reproducible black ink. Every notary public
249 shall print, type, or stamp below his or her signature on a
250 paper document his or her name exactly as commissioned. An
251 impression-type seal may be used in addition to the rubber stamp
252 seal, but the rubber stamp seal is ~~shall be~~ the official seal
253 for use on a paper document, and the impression-type seal may
254 not substitute for the stamp ~~be substituted therefor~~.

255 ~~(b) Any notary public whose term of appointment extends~~
256 ~~beyond January 1, 1992, is required to use a rubber stamp type~~
257 ~~notary public seal on paper documents only upon reappointment on~~
258 ~~or after January 1, 1992.~~

259 ~~(a)~~ ~~(e)~~ The notary public official seal and the certificate
260 of notary public commission are the exclusive property of the
261 notary public and must be kept under the direct and exclusive

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262 control of the notary public. The seal and certificate of
263 commission may ~~must~~ not be surrendered to an employer upon
264 termination of employment, regardless of whether the employer
265 paid for the seal or ~~for~~ the commission.

266 (b) ~~(d)~~ A notary public whose official seal is lost, stolen,
267 or believed to be in the possession of another person must ~~shall~~
268 immediately notify the Department of State or the Governor in
269 writing.

270 (c) ~~(e)~~ Any person who unlawfully possesses a notary public
271 official seal or any papers or copies relating to notarial acts
272 commits ~~is guilty of~~ a misdemeanor of the second degree,
273 punishable as provided in s. 775.082 or s. 775.083.

274 (9) A ~~Any~~ notary public who lawfully changes his or her
275 name must ~~shall~~, within 60 days after such change, request an
276 amended commission from the Department ~~Secretary~~ of State and
277 ~~shall~~ send \$25, his or her current commission, and a notice of
278 change form, obtained from the department ~~Secretary of State~~,
279 which includes ~~shall include~~ the new name and ~~contain~~ a specimen
280 of his or her official signature. The department ~~Secretary of~~
281 ~~State~~ shall issue an amended commission to the notary public in
282 the new name. A rider to the notary public's bond must accompany
283 the notice of change form. After submitting the required notice
284 of change form and rider to the department ~~Secretary of State~~,
285 the notary public may continue to perform notarial acts in his
286 or her former name for 60 days or until receipt of the amended
287 commission, whichever occurs first ~~date is earlier~~.

288 Section 4. Section 117.103, Florida Statutes, is amended to
289 read:

290 117.103 Certification of notary's authority ~~by Secretary of~~

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291 ~~State.~~—A notary public is not required to record his or her
292 notary public commission in an office of a clerk of the circuit
293 court. If certification ~~of the notary public's commission~~ is
294 required, it must be obtained from the Department Secretary of
295 State. Upon ~~the~~ receipt of a written request and a fee of \$10
296 payable to the Department Secretary of State, the department
297 ~~Secretary of State~~ shall issue a certificate of notarial
298 authority, in a form prescribed by the department Secretary ~~of~~
299 ~~State~~, which includes ~~shall include~~ a statement explaining the
300 legal qualifications and authority of a notary public in this
301 state.

302 Section 5. Subsections (2) and (9) of section 117.107,
303 Florida Statutes, are amended to read:

304 117.107 Prohibited acts.—

305 (2) A notary public may not sign notarial certificates
306 using a ~~facsimile~~ signature stamp unless the notary public has a
307 physical disability that limits or prohibits his or her ability
308 to make a written signature and unless the notary public has
309 first submitted written notice to the Department of State with
310 an exemplar of the ~~facsimile~~ signature stamp.

311 (9) A notary public may not notarize a signature on a
312 document if the person whose signature ~~is~~ being notarized is not
313 in the presence of the notary public at the time the signature
314 is notarized. A ~~Any~~ notary public who violates this subsection
315 commits ~~is guilty of~~ a civil infraction, punishable by penalty
316 not exceeding \$5,000, and such violation constitutes malfeasance
317 and misfeasance in the conduct of official duties. It is not a
318 ~~no~~ defense to the civil infraction ~~specified in this subsection~~
319 that the notary public acted without intent to defraud. A notary

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320 public who violates this subsection with the intent to defraud
321 violates is guilty of violating s. 117.105 and is subject to
322 suspension pursuant to s. 117.01(7).

323 Section 6. Subsection (11) of section 668.50, Florida
324 Statutes, is amended to read:

325 668.50 Uniform Electronic Transaction Act.—

326 (11) NOTARIZATION AND ACKNOWLEDGMENT.—

327 ~~(a)~~ If a law requires a signature or record to be
328 notarized, acknowledged, verified, or made under oath, the
329 requirement is satisfied if the electronic signature of the
330 person authorized by applicable law to perform those acts,
331 together with all other information required to be included by
332 other applicable law, is attached to or logically associated
333 with the signature or record. ~~Neither~~ A rubber stamp or ~~nor an~~
334 impression type seal is not required for ~~an~~ electronic
335 notarization.

336 ~~(b) A first-time applicant for a notary commission must~~
337 ~~submit proof that the applicant has, within 1 year prior to the~~
338 ~~application, completed at least 3 hours of interactive or~~
339 ~~classroom instruction, including electronic notarization, and~~
340 ~~covering the duties of the notary public. Courses satisfying~~
341 ~~this section may be offered by any public or private sector~~
342 ~~person or entity registered with the Executive Office of the~~
343 ~~Governor and must include a core curriculum approved by that~~
344 ~~office.~~

345 Section 7. All powers, duties, functions, records,
346 personnel, associated administrative support positions,
347 property, pending issues, existing contracts, administrative
348 authority, and administrative rules relating to the processing

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349 of applications for appointment as a notary public, the
350 education and assistance of notaries public, and the
351 investigation of complaints against notaries public are
352 transferred by a type two transfer, as defined in s. 20.06(2),
353 Florida Statutes, from the Executive office of the Governor to
354 the Department of State. All powers, duties, functions, records,
355 personnel, associated administrative support positions,
356 property, pending issues, existing contracts, administrative
357 authority, and administrative rules relating to the appointing
358 and suspension of notaries public are retained by the Executive
359 Office of the Governor.

360 Section 8. A nonrecurring sum of \$1,350,000 shall be
361 transferred via nonoperating transfer by the Executive Office of
362 the Governor from the Grants and Donations Trust Fund to the
363 Department of State Operating Trust Fund to fund the processing
364 of notary applications, education and assistance for notaries
365 public, and the investigation of complaints against notaries
366 public.

367 Section 9. This act shall take effect July 1, 2012.